

(5) To select or assess appropriate personal protective equipment for the exposed miner.

(6) To design or assess engineering controls or other protective measures for the exposed miner.

(7) To conduct studies to determine the health effects of exposure.

(c) The request explains in detail why the disclosure of the following information would not satisfy the purpose described in paragraph (b) of this section:

(1) The properties and effects of the chemical.

(2) Measures for controlling the miner's exposure to the chemical.

(3) Methods of monitoring and analyzing the miner's exposure to the chemical.

(4) Methods of diagnosing and treating harmful exposures to the chemical.

(d) The request describes the procedures to be used to maintain the confidentiality of the disclosed information.

(e) The person making the request enters a written confidentiality agreement that he or she will not use the information for any purpose other than the health needs asserted and agrees not to release the information under any circumstances, except as authorized by § 47.85, by the terms of the agreement, or by the operator.

**§ 47.85 Confidentiality agreement and remedies.**

(a) The confidentiality agreement authorized by § 47.84—

(1) May restrict the use of the trade secret chemical identity to the health purposes indicated in the written statement of need;

(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages;

(3) Must allow the exposed miner, the miner's designated representative, or the health professional to disclose the trade secret chemical identity to MSHA;

(4) May provide that the exposed miner, the miner's designated representative, or the health professional inform the operator who provided the trade secret chemical identity prior to

or at the same time as its disclosure to MSHA; and

(5) May not include requirements for the posting of a penalty bond.

(b) Nothing in this subpart precludes the parties from pursuing non-contractual remedies to the extent permitted by law.

**§ 47.86 Denial of a written request for disclosure.**

To deny a written request for disclosure of the identity of a trade secret chemical, the operator must—

(a) Put the denial in writing,

(1) Including evidence to substantiate the claim that the chemical's identity is a trade secret,

(2) Stating the specific reasons why the request is being denied, and

(3) Explaining how alternative information will satisfy the specific medical or occupational health need without revealing the chemical's identity.

(b) Provide the denial to the health professional, miner, or designated representative within 30 days of the request.

**§ 47.87 Review of denial.**

(a) The health professional, miner, or designated representative may refer the written denial to MSHA for review. The request for review must include a copy of—

(1) The request for disclosure of the identity of the trade secret chemical,

(2) The confidentiality agreement, and

(3) The operator's written denial.

(b) If MSHA determines that the identity of the trade secret chemical should have been disclosed, the operator will be subject to citation by MSHA.

(c) If MSHA determines that the confidentiality agreement would not sufficiently protect against unauthorized disclosure of the trade secret, MSHA may impose additional conditions to ensure that the occupational health services are provided without an undue risk of harm to the operator.

(d) If the operator contests a citation for a failure to release the identity of a trade secret chemical, the matter will be adjudicated by the Federal Mine Safety and Health Review Commission.